

Housing and Property Chamber
First-tier Tribunal for Scotland



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 51 of the Private Housing
(Tenancies) (Scotland) Act 2016**

Chamber Ref: FTS/HPC/EV/24/1999

Property : 38C Bank Street, Kilmarnock KA1 1HA (“Property”)

Parties:

**Gordon McKee, Linnmore, 57A Main Street, Dundonald, South Ayrshire KA2
9HH (“Applicant”)**

**Limegreen Estate Agents Ltd, 14 The Cross, Prestwick KA9 1AJ (“Applicant’s
Representative”)**

Archie Jake Phiri, 38C Bank Street, Kilmarnock KA1 1HA (“Respondent”)

Tribunal Members:

Joan Devine (Legal Member)

Sandra Brydon (Ordinary Member)

Decision

**The First-tier Tribunal for Scotland (Housing and Property Chamber)
 (“Tribunal”) determined to grant an order for possession of the Property.**

The Applicant sought recovery of possession of the Property. The Applicant had lodged Form E. The documents produced were: a Private Tenancy Agreement which commenced on 29 November 2021; Notice to Leave under Section 50(1)(a) of the Private Housing (Tenancies) (Scotland) Act 2016 ("Act") dated 28 February 2024 ("Notice to Leave") with covering email to the Respondent dated 28 February 2024; statement of rent arrears; notification to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003. On 3 February 2025 the Applicant's representative lodged an updated statement of rent arrears which indicated that the arrears were £5,600 as at 29 January 2025. A Case Management Discussion ("CMD") was fixed to take place on 4 February 2025. On the morning of the CMD it was apparent that the date had not been intimated to the Respondent. A fresh date was fixed for 22 July 2025. Notification of the date of the CMD was intimated to the Respondent by sheriff officer on 26 June 2025. On 14 July 2025 the Applicant's Representative lodged a written representation which included a report from a right of entry attendance at the Property and a statement of rent arrears which indicated arrears of £7,350 as at 29 June 2025.

Case Management Discussion (“CMD”)

A CMD took place before the Tribunal on 22 July 2025 by teleconference. The Applicant was represented by Hannah Mackenzie of the Applicant’s Representative. There was no appearance by or on behalf of the Respondent.

Ms Mackenzie told the Tribunal that aside from the right of entry, there had been no recent contact with the Respondent. She said she did not know why the Respondent had stopped paying the rent in 2023. She said he is 25 years old and had always been employed in bar work or as a delivery driver and the rent had been paid on time. She said he lived in the Property alone. She said she was not aware of the Respondent having applied for any benefits. She said that the inspector at the right of entry confirmed the Respondent was living in the Property. She said the Property was in such a state that the inspector could not carry out the necessary safety checks. She said the Applicant was concerned about the Respondent’s welfare.

Findings in Fact

The Tribunal made the following findings in fact:

1. The Applicant and the Respondent entered into a Tenancy Agreement which commenced on 29 November 2021.
2. The Notice to Leave was served by email on 28 February 2024.
3. At the date of service of the Notice to Leave and the date of making the Application, the Respondent had been in rent arrears for three or more consecutive months.
4. Notification was provided to the Local Authority in terms of Section 11 of the Homelessness Etc. (Scotland) Act 2003 on 30 April 2024.

Reasons for the Decision

The Tribunal determined to make an Order for possession of the Property in terms of Section 51 of the Act. In terms of section 51 of the Act, the First-tier Tribunal may issue an eviction order against the tenant under a private residential tenancy if, on an application by the landlord, it finds that one of the eviction grounds named in schedule 3 applies. In the Notice to Leave the Applicant stated that they sought recovery of possession of the Property on the basis set out in ground 12 which is that the tenant has been in rent arrears for three or more consecutive months. The Tribunal considered the statement of rent arrears provided and determined that ground 12 had been established. Having considered all of the circumstances, and in the absence of a submission from the Respondent, the Tribunal determined that it was reasonable to issue an eviction order

Decision

The Tribunal grants an order for possession of the Property.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

**Joan Devine
Legal Member**

J Devine

Date : 22 July 2025